

32391
DO

SERVICE DATE - DECEMBER 31, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY--
ABANDONMENT EXEMPTION--IN CRAWFORD, WILSON, ELK AND GREENWOOD
COUNTIES, KS AND OSAGE AND TULSA COUNTIES, OK

Decided: December 27, 2001

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92). On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg (City) for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall.¹ The negotiation period under the NITU was extended at the request of TPL to November 25, 2001, for the portion of the right-of-way between milepost 157.10 and milepost 188.0 by decision served June 1, 2001.²

¹ On December 29, 2000, a NITU was served authorizing a 180-day period for SKO to negotiate a trail use agreement with American Trails Association (ATA) for the 23.5-mile portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia. As reflected by a Board decision issued on October 26, 2001, ATA filed a letter in January 2001, stating that it had reached a trail use agreement with SKO, taken possession of the 23.5-mile portion of the right-of-way, and assumed responsibility for its maintenance.

² The June 1, 2001 decision also stated that on March 15, 2001, TPL and SKO consummated a trail use/rail banking agreement for the portion of the right-of-way between milepost 153.0 and 157.10. By decision served October 10, 2001, the proceeding was reopened and the NITU served November 29, 2000, was vacated as to the segment between milepost 153.05 and milepost 157.10, and the City was authorized to replace TPL as the new trail user over that portion of the
(continued...)

On December 10, 2001, TPL filed a request to extend the negotiating period for the portion of the line between milepost 157.10 and milepost 188.0 for an additional 180 days. TPL states that it and SK&O are continuing to negotiate an interim trail use agreement but, were unable to complete negotiations before November 25, 2001. On December 21, 2001, SKO advised that it had not consummated abandonment of that portion and that it is agreeable to a 180-day extension of the NITU negotiation period as to it.

Where as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, further extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1977). Accordingly, the NITU negotiating period will be extended to May 24, 2002.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The NITU negotiating period for that portion of the railroad line between milepost 157.10 and milepost 188.0 in Tulsa and Osage Counties, OK, is extended to May 24, 2002.

2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

²(...continued)
right-of-way.

³ See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company-Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan 2, 1990); and SSW Ry. Co.-Aban.-In Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).